Assessment Year 1983-84

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

I.T.A. No. 370 of 2001
(Old No. 132/1999)

The Commissioner of Income Tax,
Meerut and another …… Appellants

Versus

Atwood Oceanics International S.A.
As agent of Mr. Alistair Cuthill …… Respondent

Mr. S.K. Posti, learned Advocate for Income Tax Department.

Hon'ble P.C. Verma, A.C.J.
Hon'ble P.C. Pant, J.

1. This is an appeal under section 260A of the Income Tax, 1961 filed by the Revenue against the judgment and order dated 6.11.1998 passed by the Income Tax Appellate Tribunal, New Delhi in I.T.A. No. 5836/D/90.

2. Mr. Alistair Cuthill is the employee of M/s Atwood Oceanics International S.A., who was employed during the relevant previous year on the offshore drilling rig operating off the west coast for oil exploration in the continental shelf of India for ONGC.

3. The questions raised before us are as follows:

    1. Whether the learned Income Tax Appellate Tribunal was legally correct to treat the continental shelf to the exclusive economic zone as not forming part of India prior to 1.4.1983 for the purpose of Income Tax Act, 1961?
    2. Whether the learned Appellate Tribunal was justified in holding that the salary income earned by the respondent-employees for services rendered prior to 1.4.1983 in a rig located in the off-shore areas outside the territorial waters of India, was not chargeable to Tax under the Income Tax Act, 1961, for the Assessment Year 1983-84?

4. Heard learned counsel for the parties and perused the record.

5. As this Court has discussed in Income Tax Appeal No. 438 of 2001; The Commissioner of Income Tax, Meerut & another Vs Atwood Oceanics International S.A. as agent of Mr. Gene Little dated 16th October, 2003, the reasoning regarding these questions is given in the following paragraph:

6. In this appeal we are concerned regarding taxability of income earned by a foreign technician, employee, on the rigs located in the continental shelf and the economic zone but beyond territorial waters of India during the accounting year ending 31st March, 1983. On 31st March 1983, Government of India issued notification No. GSR-304(E) under section 6(6) and section 7(7) of Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act 1976(hereinafter referred to for the sake of brevity as the said Act 1976). By the said notification the provisions of the Income Tax Act were made applicable from 1.4.1983 to the Continental Shelf and Exclusive Economic Zone. It is important to note that in this case we are concerned with the concept of Taxable Territory of India under Income Tax Act, 1961. This is important as it is only by virtue of notification dated 31st March 1983 that the Continental Shelf and the Exclusive Economic Zone became part of the taxable territory w.e.f. 1.4.1983. To levy the tax the income must accrue in the territory to which the Income Tax Act applies. In this case Article 297 of the Constitution is not relevant. For the purposes of deciding this matter the only relevant issue is whether the income earned by a non-resident accrued in a taxable territory prior to 1.4.1983. On facts, it is clear that the foreign technician had earned salary income before 1.4.1983 by working on the oil rigs, located beyond 12 nautical miles and therefore, he has not taxable for assessment year 1983-84. Our view is supported by the judgment of the Madras High Court in the case of Commissioner of Income-tax Vs. Ronald William and others reported in 215-ITR page 638 and also by the judgment of the Bombay High

Court in cases of McDermott International Vs Union of India reported in 173-ITR-155.

8. For the reasons aforesaid, we answer both the above questions in the affirmative i.e. in favour of the assessee and against the Department.

9. Appeal is dismissed accordingly. No order as to costs.

(P.C. Pant, J.) **(P.C. Verma, A.C.J.)**

Dt. 07.07.2004.
G